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Note by the Secretariat

Addendum

World Intellectual Property Organization

Summary

In the present information note, the World Intellectual Property Organization (WIPO) responds to the recommendations made by the Permanent Forum on Indigenous Issues at its second session, in 2003. WIPO draws attention in particular to a set of measures put in place to enhance the participation of indigenous peoples and local communities in the work of WIPO, including the sessions of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Information is provided on the recently renewed mandate of the Intergovernmental Committee and the ongoing capacity-building programmes of WIPO, which also involve extensive participation by representatives of indigenous and local communities. WIPO additionally provides information on a meeting of the Inter-Agency Support Group that it hosted in September 2003.

* E/C.19/2004/1.

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I. Responses to recommendations addressed to the World Intellectual Property Organization by the Permanent Forum at its second session

1. Recommendation 10, in chapter I, paragraphs 58 and 59, of the report of the Permanent Forum on its second session,[1] is addressed to the World Intellectual Property Organization (WIPO). Paragraph 58 refers to the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, to the willingness of the Forum to contribute expertise and experience to the work of the Committee and to the funding of the participation of members of the Forum in sessions of the Committee. Paragraph 59 recommends that WIPO undertake a study, in collaboration with the Forum, on the use and commercialization of, and benefit-sharing in connection with, indigenous knowledge relating to medicinal plants. In addition, chapter I, paragraph 97, of the report refers to the participation of indigenous peoples and local communities in the work of the Committee.

Mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

2. In late 2003, the member States of WIPO decided on a new and extended mandate for the Intergovernmental Committee, which requires it to accelerate its work and to focus in particular on the international dimension of intellectual property and genetic resources, traditional knowledge and traditional cultural expressions (or "expressions of folklore"). The new mandate of the Committee is not limited in terms of possible results that may eventually be achieved, including the possible development of an international instrument or instruments in this field. The next session of the Committee will take place at WIPO headquarters in Geneva from 15 to 19 March 2004. The programme of activities in this area also includes a range of complementary practical activities, such as capacity-building, legislative assistance and cooperation with a broad spectrum of national, regional and international initiatives.

3. All working documents, papers, studies, questionnaires and other material prepared for consideration by the Committee, as well as comprehensive reports on its sessions, are publicly available, in English, French and Spanish, at http://www.wipo.int/tk/en/igc/documents/index.html.

Contribution of expertise and experience by the Forum

4. The Forum was represented at the fifth session of the Intergovernmental Committee, in July 2003, and a member of the Forum, Parshuram Tamang, participated at the invitation of WIPO in a WIPO interregional seminar on intellectual property and genetic resources, traditional knowledge and folklore in Isfahan, Islamic Republic of Iran, in June 2003. **WIPO considers that the Forum can play a vital role in contributing expertise and experience to its activities and would be pleased to build upon and extend its relationship with the Forum in this regard.** For example, as mandated by the Committee, WIPO is commencing

a study of indigenous and customary laws and of how greater respect for them may constitute a part of effective protection for traditional cultural expressions and knowledge. WIPO would welcome expert advice and input from the Forum in relation to this study and will be in contact with the Forum in this regard in due course.

Participation of indigenous peoples

5. The member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Forum and indigenous representatives in the sessions of the Intergovernmental Committee. Exploration and consultation continue on options and modalities for facilitating and generally improving the participation of indigenous peoples in the work of WIPO on these issues. The practical experience and guidance of the Forum and its members are invaluable inputs for achieving this goal. Member States of WIPO have expressed their "unanimous support for directly involving as much as possible representatives of indigenous and local communities in the work of the Intergovernmental Committee".[2] Ongoing work focuses on improved arrangements for the development of, and consultation on, substantive materials and on improving and funding participation. The member States of WIPO have also expressed the wish that the participation of the Permanent Forum in the work of the Committee be facilitated.[3]

6. In this regard, a number of practical steps have already been undertaken, including:

(a) A fast-track accreditation procedure for all non-governmental organizations has been in place since the first session of the Committee, in April 2001. More than 85 non-governmental organizations have received accreditation, including many representing indigenous peoples. No applicant has been denied accreditation;

(b) The Forum's important role in coordinating indigenous engagement with international policy debate has been recognized, with the WIPO General Assembly extending a formal invitation to take part and many participants welcoming the active participation of the Forum;

(c) A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in sessions of the Committee;

(d) The funds provided by WIPO to support the participation of developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities;

(e) Consultations and workshops at the national and regional levels and other forums aimed at developing focused input for the Committee have included representatives of indigenous and local communities as speakers and participants;

(f) As agreed by the Committee at its last session, the WIPO web site now provides for written contributions by accredited non-governmental organizations on the issues before the Committee (see http://www.wipo.int/tk/en/igc/ngo/index.html);

(g) Specific briefings and consultations for non-governmental organization representatives, particularly representatives of indigenous and local communities, are undertaken within the framework of meetings of the Committee;

(h) The WIPO secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the Committee, as well as related capacity-building and awareness documents, including a series of case studies and a distance learning course prepared by indigenous experts.

7. The fifth session of the Committee, in July 2003, studied a wide range of specific proposals regarding the participation of indigenous and local communities,[4] and an update and further proposals will be discussed at the sixth session, in March 2004.[5]

Study on indigenous knowledge related to medicinal plants

8. WIPO has conducted several studies and analyses on the intellectual property issues associated with the use and commercialization of, and benefit-sharing in connection with, indigenous knowledge relating to medicinal plants. For example, in cooperation with the United Nations Environment Programme (UNEP), WIPO commissioned the publication of case studies on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge, which were widely distributed in 2001. Numerous other activities, papers and studies undertaken and published by WIPO dealing with traditional knowledge more generally, as well as genetic resources, also address the kinds of issues raised in the Forum's recommendation. In 1999, for example, WIPO organized, in cooperation with the Government of India, a round table on traditional medicine in New Delhi, and in 2003 it conducted a fact-finding mission on traditional medicine in China. The results of these activities and existing materials might be useful as an initial source of information for the Forum. **WIPO would be pleased to discuss with the Forum its interests and objectives and how best WIPO can assist in this regard.**

9. Chapter I, paragraph 96, of the report of the Permanent Forum on its second session recommends that WIPO continue to cooperate with other organizations and agencies. Indeed, WIPO and other organizations and agencies, such as the secretariat of the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, UNEP and the Office of the United Nations High Commissioner for Human Rights, continue to cooperate, particularly to avoid duplication and ensure the complementarity of their respective activities.

II. Responses to recommendations addressed to more than one agency by the Permanent Forum at its second session

10. In chapter I, paragraphs 36 and 45, of the report, reference is made to the principle of prior informed consent in relation, inter alia, to indigenous knowledge. In the work of WIPO on intellectual property, traditional knowledge and cultural expressions, this principle is often discussed. An aspect of prior informed consent is

already a part of current intellectual property rights in the form of exclusive rights, the most common form of intellectual property right. In addition, the Committee is exploring ways in which prior informed consent could form part of possible new sui generis intellectual property systems. **WIPO would be willing to contribute information in this regard to any working group that may be established in relation to prior informed consent.**

11. Chapter I, paragraph 42, of the report refers to arts and crafts and certificates of origin in particular. In a series of practical studies commissioned by WIPO, Australian indigenous lawyer Terri Janke provides information on how indigenous Australians have used trademarks and licensing arrangements to certify the authenticity of their arts and crafts.[6]

III. Other significant information

12. WIPO was pleased to welcome the Chairman of the Forum, Henrik Ole Magga, and two Forum members, Ida Nicolaisen and Wilton Littlechild, at its headquarters on 18 September 2003, where they met with Francis Gurry, Assistant Director General, and colleagues.

IV. Information regarding indigenous women

13. The WIPO web site contains a page dedicated to women and intellectual property, which includes a specific section on women and traditional knowledge.[7]

V. List of relevant conferences and other meetings in 2004-2005

14. The sixth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is to be held in Geneva from 15 to 19 March 2004.

Meeting of the Inter-Agency Support Group

15. In accordance with the rotational schedule of the Inter-Agency Support Group, WIPO hosted one of its meetings at its headquarters in Geneva on 8 September 2003. Ten United Nations agencies and organizations were represented. During a full and productive meeting, the Group discussed and made progress on a number of issues. Considerable attention was given to the methods of cooperation between the Support Group and the Forum, as it was felt that in-depth discussion of this issue would pave the way for an enhanced working relationship between the Forum and the United Nations system and provide longer-term benefits. Discussions were aimed at further improving inter-agency cooperation on indigenous issues and at identifying modalities for strengthening the ability of the United Nations system to respond to the Forum's recommendations. Numerous useful and practical suggestions were made and have been communicated to the Forum, at the request of the Support Group, by the Department of Economic and Social Affairs, which is also a member of the Support Group. The terms of reference of the Support Group were

also updated, and many practical matters arising from the Forum's recommendations made at its second session were discussed. Preparations for a workshop on data collection in January 2004 and arrangements for the elaboration of a Support Group paper on free, prior and informed consent were also discussed. However, more time would have been required to deal fully with all matters. The Support Group was pleased to welcome the United Nations Conference on Trade and Development to the meeting as a new member, and agreed to continue efforts to encourage other agencies and organizations to join. The United Nations Development Programme offered to host the next Support Group meeting in New York.

Notes

[1] *Official Records of the Economic and Social Council, 2003, Supplement No. 23* (E/2003/43-E/C.19/2003/22).

[2] Report on the fourth session of the Intergovernmental Committee (WIPO/GRTKF/IC/4/15), para. 60 (i).

[3] Ibid., para. 60 (iii).

[4] See WIPO/GRTKF/IC/5/11.

[5] See WIPO/GRTKF/IC/6/10.

[6] Available in hard copy from WIPO and at http://www.wipo.int/tk/en/publications/index.html.

[7] See http://www.wipo.int/women-and-ip/en/programs/tk.htm.